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CLEARINGHOUSE RULE 95-067

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Under what authority does the department, in s. HSS 201.055 (7) (b), propose to modify an administrative rule by a process other than that specified in ch. 227, Stats.?

b. Section 49.19 (11) (b), Stats., provides, in part, that an Aid to Families with Dependent Children (AFDC) emergency assistance grant may be used only to obtain a permanent living accommodation. However, s. HSS 201.055 (8) (a), appears to provide that if the group is eligible for an AFDC emergency assistance grant due to homelessness, the agency must issue the grant within five days of being notified that the group has already obtained a permanent living accommodation. Requiring the recipient to obtain permanent living accommodation prior to receipt of an AFDC emergency assistance grant seems to conflict with the legislative intent of the AFDC emergency assistance grant program embodied in s. 49.19 (11) (b), Stats.

In addition, s. HSS 201.055 (8) (d) authorizes an AFDC emergency assistance grant to be used for temporary or transitional shelter or housing if the group's homelessness is caused by fire, flood or natural disaster. This, too, would appear to conflict with the clear statutory requirement that the AFDC emergency assistance grant may be used only to obtain a permanent living accommodation in the case of homelessness. Perhaps par. (d) could be modified to provide that an AFDC emergency assistance grant may be used for temporary or transitional shelter or housing if the group's need for assistance arises due to fire, flood or natural disaster. [See, also, s. HSS 201.055 (6) (b) 3.]

2. Form, Style and Placement in Administrative Code

a. Generally, it is useful if all subunits of a rule end with a period, rather than a comma or semicolon or the word “and” or “or” (except for introductory material, which ends with a

colon). Doing so facilitates insertion or deletion of subunits in the future without having to move the word “and” or “or” in the next-to-the-last subunit. [See s. 1.03 (intro.), Manual.]

b. Is s. HSS 201.055 (7) (a) 1. needed? It appears that no practical purpose is served by comparing the amounts in subd. 1. and that all the agency need do is the subtraction. Hence, par. (a) could be rewritten as follows: “In determining the AFDC emergency assistance payment, the agency shall subtract the AFDC emergency assistance group’s total income, as determined under _____ and assets determined under _____ from the group’s total financial need determined under _____.”

c. Either s. HSS 201.055 (9) should be placed in sub. (6), or sub. (6) should contain an appropriate cross-reference to sub. (9).

3. Conflict With or Duplication of Existing Rules

If the department revises the amount of the AFDC emergency assistance grant amount by publishing a notice and updating its “other programs eligibility handbook,” as it proposes to do in s. HSS 201.055 (7) (b), it appears clear that a conflict would develop between the amount set forth in the rule and the amount set forth in the handbook. Accordingly, any changes made to the amount of the AFDC emergency assistance grant amount should include, at a minimum, a corresponding amendment to the rule. In addition, the analysis to the rule states that without administrative rules setting forth the amount of the grant, the department has been open to legal challenge. If the amount of the AFDC emergency assistance grant amount is changed through a change in the “other programs eligibility handbook,” would the department be subject to the same type of legal challenge the department is currently open to?

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. HSS 201.055 (3) (a), the reference to s. 406 (e) of the Social Security Act of 1935 should be replaced with the appropriate citation to the U.S. Code. [See s. 1.07 (3), Manual.]

b. In s. HSS 201.055 (7) (a) 1., appropriate cross-references should be included identifying the provisions under which the AFDC emergency assistance group’s available income and available assets are determined.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. HSS 201.055 (1), the rule refers to eligibility criteria for the AFDC emergency assistance program under 45 C.F.R. s. 233.120. However, that part of the Code of Federal Regulations (CFR) appears to refer only to the limitations for federal participation in the state’s AFDC emergency assistance program. The rule might be clarified if the last part of sub. (1) were rewritten as follows: “who meet the eligibility criteria under this section and the eligibility criteria for federal financial participation under 45 CFR 233.120.”

b. The reference in s. HSS 201.055 (3) (d) to 24 C.F.R. s. 576.3 is confusing. It does not appear that 24 C.F.R. s. 576.3 lists any specific populations of the homeless. It does appear,

however, that 24 C.F.R. s. 576.3 defines “emergency shelter” in almost identical terms as par. (d) defines “emergency shelter facility.” Is the purpose of providing the citation to the CFR in par. (d) intended to inform the reader that “emergency shelter” and “emergency shelter facility” have similar meanings?

c. The phrase “and available from an agency” in the first sentence of s. HSS 201.055 (4) is unnecessary and can be deleted because the note to the rule adequately advises individuals where the forms can be obtained. In addition, because it appears from the last sentence of sub. (4) that the agency must verify an applicant’s eligibility, the second sentence should be rewritten: “Upon receipt of a completed application, the agency shall verify the applicant’s eligibility for AFDC emergency assistance.” However, the last two sentences may also be moved to sub. (8).

d. For purposes of simplification, s. HSS 201.055 (5) (a) 1., should be rewritten as follows: “The group members meet the residence criteria in s. HSS 201.15.

e. In s. HSS 201.055 (5) (a) 6. d., the phrase “in accordance with” should be replaced by the phrase “as determined under.”

f. Section HSS 201.055 (5) (b) (intro.) is awkward and should be rewritten substantially as follows: “An AFDC emergency assistance group shall be considered homeless for purposes of determining eligibility under par. (a) if the group needs AFDC emergency assistance to obtain a permanent living accommodation and if any of the following conditions apply:”. Also, is it possible to define a “permanent living accommodation”? Would this term include an apartment which is rented on a month-to-month basis?

g. Section HSS 201.055 (6) is entitled “Financial Eligibility.” However, it does not appear that the subsection relates to an AFDC emergency assistance group’s financial eligibility for AFDC emergency assistance. In light of sub. (5), it would seem logical that sub. (6) would specify the income or asset limits under which persons may qualify for AFDC emergency assistance. Must the AFDC emergency assistance group be eligible for AFDC? Are there limits on the income or assets of a group member? The rule should be clarified. Also, par. (a) makes reference on at least two occasions to the group’s physical needs. These references should include a cross-reference to par. (b). In the alternative, the definition of “physical needs” as provided in par. (b) could be moved to the definition section of the rule.

h. Section HSS 201.055 (6) (c) 1. is not clear. Can that provision be rewritten to read: “The disregards under s. 49.109 (5) (a) 4. and 4m. and (am), Stats., do not apply.”? Also, in subds. 2. to 4., the phrase “is not counted” should be replaced by the phrase “shall be disregarded.” Finally, in subd. 4., the phrase “that month” should be replaced by the phrase “the month of the emergency.”

i. In s. HSS 201.055 (6) (d), the second sentence should begin as follows: “No asset may be considered....” The third sentence should begin: “Assets shall be considered....” Finally, the last sentence should begin as follows: “No available real property may be included....”

j. The phrase “payment amount” in s. HSS 201.055 (7) (a) (intro.), should be replaced by the phrase “AFDC emergency assistance payment.”

k. The phrase “AFDC emergency assistance” should be inserted between the word “The” and the word “payment” at the beginning of the first sentence of s. HSS 201.055 (7) (b). Also, the word “may” should be inserted between the words “but” and “not” in the first sentence and the word “to” before the word “exceed” should be deleted. The material in the first sentence beginning after the word “member” appears to be superfluous and should be deleted.

l. Under s. HSS 201.055 (8) (c), can a group receive more than one AFDC emergency assistance grant in a year if different agencies give the grant? If not, par. (c) should be rewritten to provide that no AFDC group may receive more than one AFDC emergency assistance grant in a 12-month period.

m. In s. HSS 201.055 (8) (d), can an AFDC emergency group use an AFDC emergency assistance grant for the items listed in par. (d)? If not, par. (d) should be clarified and rewritten so that it is clear that AFDC emergency assistance grants cannot be used for the prohibited items.

n. Can anyone request a fair hearing under s. HSS 201.055 (10) or is the fair hearing limited to those individuals who have not had their application for AFDC emergency assistance acted upon in a prompt manner and to those who have been denied benefits? Subsection (10) appears to allow any group to request a fair hearing.